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No. 93-7138

In The

Supreme Court of the United States

October Term, 1994

WILLIAM WADDELL STAPLETON, *et al.*, Individually and as Representative for the Class of Claimants in pending Cause No. 15,445 in the Circuit Court of Rankin County, Mississippi and all others similarly situated,

Petitioner,

v.

SEAMUS IAIN COWLEY, *et al.*, Individually, and as Representative of other Underwriters subscribing to policy number 5239328506,

and

TEXAS SNUBBING CONTROL, INC., a Texas Corporation,

and

GARY KNOSTMAN, Trustee of the Estate in Bankruptcy of Tomlinson Interests, Inc., a Texas Corporation,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

OPPOSITION OF RESPONDENT, Seamus Iain Cowley, Individually and as Representative for Other Underwriters at Lloyds, London Subscribing to Policy No. 5239328506

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Respondent Seamus Iain Cowley ("Underwriters") requests that the Court deny the Petition for Writ of Certiorari to the United States Court of Appeals For The Fifth Circuit.

OPINIONS BELOW

Petitioner's appendices provide the pertinent opinions.

JURISDICTION

Jurisdiction exists under 28 U.S.C. §§ 1254 and 1332.

SUMMARY

Petitioner, William Waddell Stapleton ("Petitioner") asks this Court to review the decision of the United States Court of Appeals for the Fifth Circuit. However, the Petitioner does not raise any issues of federal law. While Petitioner claims that the courts below denied him "standing" and "equal protection," the decision below merely held that Petitioner had failed to state a claim upon which relief could be granted under state law. This raises no issues worthy of review by this Court.

FACTUAL AND PROCEDURAL BACKGROUND

While Underwriters take issue with certain points in Petitioner's statement of the case, there is only one point which merits discussion for the purposes of ruling on the Petition. On page 6 of the Petition, Petitioner states that the District Court ruled that Petitioner "did not have standing to litigate coverage issues." As will be explained in more detail, *infra*, this is a misstatement of the lower court's ruling. The District Court ruled that Petitioner had standing to litigate the coverage issues, but did not have "standing" as a matter of substantive law to complain of Underwriters' actions.

REASONS FOR DENYING THE PETITION

A. The lower courts were correct in applying state substantive law to determine that Petitioner lacked standing to assert a claim against Underwriters.

The petition of William Waddell Stapleton, et al. ("Petitioner") for certiorari should be denied. Not only does the petition not present important issues of federal law as required by Rule 10 of the Rules of this Court, the petition does not present any issues of federal law.

In an attempt to manufacture a federal issue, Petitioner suggests that the courts below denied him Article III "standing" to contest the coverage issues in the case and to contest whether the settlement between Underwriters and Texas Snubbing Control was binding on Petitioner. This is a gross misrepresentation of the decisions of the courts below.

The term "standing" is subject to different legal usage, and it is apparent that Petitioner has confused the different meanings of this word. "Standing" is a constitutional requirement for federal jurisdiction, since the federal courts can only take jurisdiction over actual cases and controversies. In this context, "standing" means that the parties involved must have a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of the controversy. *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361 (1972). In the context of declaratory judgment actions brought to determine the rights of parties under liability policies, it has been consistently held that not only an assured but persons bringing claims against the assured who would be able to assert a claim against the policy if and when they obtain a judgment against the assured are proper parties, and have standing to litigate the coverage issues in question. *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 61 S.Ct. 510 (1941); *Ranger Ins. Co. v. United Housing of New Mexico, Inc.*, 488 F.2d 682 (5th Cir. 1974). Accordingly, Petitioner had standing to be joined as a defendant in this declaratory judgment proceeding, and to argue that the policy afforded coverage and that the settlement between Texas Snubbing and Underwriters would not prevent him from making a claim against the policy proceeds

if he later obtained a judgment. For this reason, Underwriters joined Petitioner as a defendant in this suit, and the lower courts afforded Petitioner every opportunity to argue his position.

It was quite apparent, however, that the term "standing" was used by the lower courts not in the sense that there was no justiciable controversy, but rather to mean that Petitioner was not a party with a cause of action under the applicable state substantive law to complain that the act of settlement violated a duty owed to him, or to argue that the settlement should be set aside. The District Court made this clear in footnote 15 of its Opinion:

> Stapleton suggests that the court would deprive him of "due process of law" and "equal protection under the law" by holding that he lacks standing to assert a claim with reference to the settlement agreement since such a holding would preclude him from asserting a challenge to the declaratory judgment sought by Underwriters. Stapleton is mistaken in this regard. That he does not have standing to assert a claim for affirmative relief in connection with the settlement agreement by no means prevents him from challenging his opponents' claim that the settlement bars him from recovery under the insurance policy at issue. That is, he is certainly free to deny that the settlement agreement is binding against him.

Moreover, in discussing the "standing" issue, the lower courts very appropriately discussed Texas and Mississippi insurance cases, not federal jurisdiction cases, since federal jurisdiction cases are irrelevant to the question of whether Stapleton had a cause of action. i.e. "standing," to complain of Underwriters' action. In short, the lower courts simply concluded that Stapleton had failed to state a claim upon which relief may be granted. Thus, the decision of the courts below that Petitioner lacked "standing" does not raise a federal question, must less one deserving review by this Court.

B. The lower courts were correct in their application of state law and Petitioner has failed to present an important federal question for review by this court.

Petitioner's other attempts to raise issues of federal law are equally spurious. Petitioner suggests that the courts below "exceeded their Article III powers by applying law in conflict with state substantive law," and that this "raises the question of equal protection under the law within our federal system." Underwriters believe that the courts below very accurately applied state contract and insurance law in holding that a third party claimant such as Petitioner who has not yet obtained a judgment was not a third party beneficiary of the insurance contract in question, and, accordingly, could not complain when the parties to the contract settled their differences. Whether the courts below were correct or not, however, is irrelevant to the question of whether this Court should grant certiorari. The standards require some important federal question; this Court does not sit as a court of last resort to correct federal courts' incorrect decisions of state law. SUP. CT. R. 10. Petitioner's suggestion that a misapplication of state law rises to a denial of equal protection is insupportable.

CONCLUSION

For the foregoing reasons, Underwriters respectfully submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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